

STATE OF TENNESSEE
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January 5, 2005

Opinion No. 05-002

Board of Commissioners of Fall River Road Utility District

QUESTIONS

1. A member of the board of commissioners of the Fall River Road Utility District was appointed in January 2000 to a four-year term. The commissioner's term expired in January 2004. The commissioner continued to serve as an incumbent. He was given an oath of office in May 2004 as an incumbent. May this commissioner continue to serve past his appointed term without being reappointed or replaced?

2. What should be done about the five months from January to May when the commissioner's term had expired and he had not taken a new oath of office?

OPINIONS

1. Under the applicable statute, a commissioner holds over until his or her successor has been appointed and qualified. Since no successor was appointed or qualified from January to May 2004, the commissioner continued in office after his or her term expired.

2. No action need be taken regarding the five months during which the commissioner held over after his or her term expired. Under 2004 Tenn. Pub. Acts Ch. 749, the three incumbent commissioners serving on May 24, 2004, the date the act became effective, are to serve an initial four-year term, beginning on May 24, 2004. If the commissioner in question was still holding over in office on May 24, 2004, then he or she is one of the incumbent officers and, under the act, will hold office until May 24, 2008.

ANALYSIS

This opinion concerns the composition of the board of commissioners of the Fall River Road Utility District. This district is a water utility district. According to the Office of the Comptroller, the district has 966 metered customers. The request states that a member of this board was appointed in January 2000 to serve a four-year term. The commissioner continued to serve after the four-year term expired in January 2004. The commissioner was not reappointed or replaced. In May 2004, the commissioner took a new oath as an incumbent.

The first question is whether the commissioner could continue in office after the four-year term to which he or she was appointed had expired. Membership of the board of directors for a utility district is governed by Tenn. Code Ann. § 7-82-307. This statute was recently amended to repeal many provisions governing utility districts in narrowly defined categories. 2004 Tenn. Pub. Acts Ch. 618. But the act provides that “those utility districts using other selection methods on the effective date of this act shall continue to use such other methods to fill vacancies.” Tenn. Code Ann. § 7-82-307(a)(2). The act was effective May 6, 2004.

The first question, then, is what method governed the selection of board members of the Fall River Road Utility District on the effective date of the act. That question can only be answered by reviewing Tenn. Code Ann. § 7-82-307 in effect before the 2004 amendments. Under subsection (b)(1), in all districts “subject to this subsection upon May 17, 1987,” commissioners are to be elected under the following provision:

Members shall hold office until their successors are elected and qualify. Any vacancy shall be filled and new commissioners shall be elected or old commissioners shall be reelected upon the expiration of any term of office by vote of the other commissioners then in office. In the event the two (2) commissioners cannot agree upon a new commissioner to fill any vacancy, they shall certify that fact to the county executive within thirty (30) days of the date upon which such vacancy occurs, and, thereupon, within ten (10) days, the county executive shall appoint a third commissioner to fill such vacancy.

Tenn. Code Ann. § 7-82-307(b)(2) (emphasis added). May 17, 1987, is the effective date of 1987 Tenn. Pub. Acts Ch. 422, which contains several amendments to the utility district statutes, including Tenn. Code Ann. § 7-82-307. Before that amendment became effective, Tenn. Code Ann. § 7-82-307(b)(1) applied to “districts coming within the provisions of subdivisions (1)-(4) of § 7-82-103.” In 1987, Tenn. Code Ann. § 7-82-103(4) included “[t]hose water utility districts having less than one thousand (1,000) subscribers to its service.” Tenn. Code Ann. § 7-82-103 (1985); Op. Tenn. Att’y Gen. 84-80 (March 7, 1984). Since Fall River Road Utility District still has fewer than one thousand subscribers, we assume that this was also the case on May 17, 1987. Therefore, in January 2004, selection of the commissioners was governed by Tenn. Code Ann. § 7-82-307(b)(2). Under that provision, members hold office until their successors are elected and qualify. *See also* Tenn. Const. Art. XI, § 5 (“Every officer shall hold his office until his successor is elected or appointed, and qualified.”) Since no successor was elected or qualified from January to May 2004, the commissioner in question continued in office after his term had expired. No action need be taken regarding this period.

The request indicates that the commissioner took a new oath “as an incumbent” in May 2004. Ordinarily, unless the commissioner had been reelected to a new term, merely taking the oath would have no legal significance. It is possible, however, that the commissioner took the oath because of 2004 Tenn. Pub. Acts Ch. 749. That act applies to any water utility district having fewer than 1,600 customers in any county with a population of not less than 39,500 nor more than 40,000 according

to the 2000 federal census or any subsequent federal census. Lawrence County had a population of 39,926 under the 2000 census. Tenn. Code Ann. Volume 13 (Supp. 2004). As noted above, the Fall River Road Utility District has 966 metered customers. Fall River Road Utility District, therefore, is subject to the act. Under the act, now codified at Tenn. Code Ann. § 7-82-307(f), the utility district is to be governed by a five-member board. The regular term of office of each utility district commissioner is four years. The statute now provides:

In order to establish staggered terms on the board, the three (3) *incumbent* commissioners serving on May 24, 2004, shall each serve an initial term of four (4) years, commencing on May 24, 2004. Thereafter, those three (3) offices shall be subject to appointment every four (4) years in accordance with the requirements and procedures set forth in this subsection (f). The initial term of office of each of the two (2) commissioners added by this subsection (f) shall be two (2) years, commencing on May 24, 2004, to be filled in accordance with the requirements and procedures set forth in this subsection (f). Thereafter, those two (2) offices shall be subject to appointment every four (4) years in accordance with the requirements and procedures set forth in this subsection (f). All unscheduled vacancies arising after May 24, 2004, shall be filled, for the remainder of the unexpired term, in accordance with the requirements and procedures set forth in this subsection (f).

Tenn. Code Ann. § 7-82-307(f)(2) (Supp. 2004) (emphasis added). If the commissioner in question was still holding over in office on May 24, 2004, then he or she is one of the incumbent officers and, under the act, will hold office until May 24, 2008. *See, e.g., State ex rel. Wyrick v. Wright*, 678 S.W.2d 61 (Tenn. 1984); *Conger v. Roy*, 151 Tenn. 30, 267 S.W. 122, 126 (1924) (an office is not vacant where there is an identifiable incumbent who may hold over until his successor is elected and qualified); *but see Stambaugh v. Price*, 532 S.W.2d 929 (Tenn. 1976) (officer holding over not entitled to hold to next biennial election where election of successor declared void).

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